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JOHANNESBURG JOINT COUNCIL

of

EUROPEANS AND NATIVES

GENERAL HERTZOG'S SOLUTION

OF THE

NATIVE QUESTION

MEMORANDUM No. 2.

UNION NATIVE COUNCIL BILL, 1927.

REPRESENTATION OF NATIVES IN PARLIAMENT BILL, 1927.

R L Esson & Co Ltd Johannesburg 5252

THE JOHANNESBURG JOINT COUNCIL OF

EUROPEANS AND NATIVES.

P. O. Box 854.
Johannesburg.

WITH the COUNCIL'S COMPLIMENTS.

From J. D. Rheinallt Jones.

Hon: Secretary.

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UNION NATIVE COUNCIL BILL, 1927.

REPRESENTATION OF NATIVES IN PARLIAMENT BILL, 1927.

CHAPTER I.

INTRODUCTION.

1. The purpose of these two measures is to abolish the Cape Native Franchise and to substitute machinery intended to fix once and for all the share of the Native population in the Government of South Africa. Purpose of Bills.

2. For the Cape Native Franchise the Bills under consideration substitute the following:— Nature of Bills.

(i) A Union Native Council to meet annually.

(ii) Seven European members in the House of Assembly to be elected by Natives, two for the Cape, two for the Transvaal, two for Natal and one for the Orange Free State.

3. Before we express any opinion on the principles involved in the general acceptance of either of these Bills, we propose to examine the provisions of each in some detail so that the reader of this Memorandum may be in a position to form an opinion upon their practicability. Discussion of Details.

NATIVE COUNCIL BILL.

4. The Native Council is to consist of 50 members, 15 of whom will be direct nominees of the Government and the remaining 35 elected by natives designated by the Governor-General-in-Council and therefore also nominees of the Government. It will be presided over by an Official of the Native Affairs Department, who may make rules of procedure and may in his discretion adjourn or close council meetings. This Council is to meet once a year. Personnel.

Electorate.

5. The basis upon which the Native Council electorate is founded is also that of the Parliamentary franchise discussed in paragraphs 15 and 16.

Function.

6. Its functions are purely deliberative and advisory. A semblance of legislative power is given to it by Section 4 (3) of the Bill under which the Council may pass Ordinances binding only on Natives in respect of any matter delegated to the Council by any future Act of Parliament. Any Ordinance can only be initiated by the Minister of Native Affairs, and has to be approved by the Governor-General after it has been passed. It is in the highest degree improbable that this Sub-section will ever become operative, since (a) Parliament is unlikely to delegate where it can itself legislate, (b) matters of legislation affecting Natives alone are difficult to imagine.

Powers Nil.

7. If Sub-section 4 (3) were ever put into force it would only mean that a Council of Natives all directly or indirectly Government nominees would express an unnecessary approval of the wishes of their nominator. It is therefore clear that the power of this Native Council is nil, and it is prevented by its constitution from being an organ for the ventilation of grievances. It is merely the Native Conference called under the Act of 1920 under another name, and does not give the Native any greater share in the Government of the country than he has without it.

Stringent. Regulations.

8. We desire to call attention to Section 2 (2) and 3 (5) d. They read as follows:—

> 2 (2) The officer designated to preside over meetings of the Council shall have the power to make and alter rules for the procedure to be observed thereat, the conduct of business and the behaviour of members present at any meeting, and he shall have full discretion to adjourn or close any meeting of the Council. Such rules may impose penalties not exceeding a fine of £5 for any breach thereof, and when approved by the Governor-General-in-Council and published in the *Gazette* shall have the force of law.
>
> 3 (5) For the following causes every member of the Council shall, *ipso facto*, vacate his seat thereon . . . . (d) failure to attend a meeting of the Council when summoned except for good and sufficient reason shown to the satisfaction of the said Minister.

Why Not European Precedents?

9. With regard to both these sections we cannot understand why the rules found suitable and sufficient for Parliament should not be adopted for Native Councils. If experience shows that they are deficient in any respect they can be added to. To mention money penalties in this connection is felt to be an insult, and to enact that a member shall lose his seat if he fails to attend a meeting of the Council when summoned, is unreasonable. What hope is there of any useful work being done by a Council condemned to meet in such an atmosphere of compulsion?

10. Under Section 4 (1) a. the Council has power to consider any matter relating to the economic, industrial or social condition of the Native population and under 4 (1) b. it can consider proposed legislation or existing laws specially affecting Natives, but under 4 (3) it only has the power to pass laws at the request and on the initiative of the Minister, so that however strongly it feels on any matter, even if it is unanimous, its resolutions will be without effect of any kind unless the Minister requests that they be given effect to in an Ordinance. Limitations.

11. Our view of this Bill is, that until the Native people have adequate Parliamentary representation as asked for later in this Memorandum, some kind of Native Council is required to ventilate Native opinion. It should be thoroughly representative and for the greater part, elected by personal vote. If local Native Councils are to be developed as a part of our local Government organisation we think the Union Native Council should in time become a congress of Local Councils. We do not support the idea that the Union Native Council should become a Native Parliament legislating for " Natives only." Council Needed.

12. We see no necessity for this Bill as it stands; but we do think that the present Union Conference (which is established under the Native Affairs Act of 1920) should be mainly elected and not entirely nominated as at present, and that Natives should be able to qualify to become individual voters. When local Councils have become general their representatives might well be in the majority; personal electors being found only in areas where no local Council exists. The electorate of local Councils should also consist of individual voters as far as possible. Act of 1920.

CHAPTER II.

REPRESENTATION OF NATIVES IN PARLIAMENT BILL.

13. The main provisions of the Representation of Natives in Parliament Bill now fall to be considered. The destructive side of the measure is contained in Section 7 which provides for the disenfranchisement of the Cape Native voter. It reads as follows:— Disenfranchisement.

(1) Anything to the contrary notwithstanding in any law providing for the qualification necessary to entitle persons to vote at elections of members of the House of Assembly or of a Provincial Council, no Native as hereinafter in this Act defined, shall after a date fixed by the Governor-General by

Proclamation in the *Gazette* be qualified to be registered as a voter or to vote at any such election except as is specially provided in this Act in regard to elections of members representing Native Electoral Areas.

(2) If by inadvertence the name of any Native has not been erased from the voters' roll . . . . the fact that his name still appears on such roll shall not entitle him to vote in an election for any electoral division, anything to the contrary notwithstanding contained in the Electoral Act 1918 or any amendment thereof.

South Africa Act.

14. It has been suggested that Parliament has no power under Sections 35 and 152 of the South Africa Act to deprive existing Native voters of their votes.

Electorate.

15. Sections 2 and 3 of the Bill provide for the election of seven members of the House of Assembly to represent Natives of the Union. The electors are to be the Government nominees who form the electorate of the Native Council (*see* paragraphs 3 (2) c and d of the Native Council Bill). They will consist of designated chiefs, headmen, members of Local Councils and individual Natives, but their number is left uncertain and is to be decided by the Governor-General-in-Council. Neither their qualification nor the manner of their designation is defined in either of the Bills, so that the Government in power can alter the Native electorate as when and how it pleases if the members returned do not conform to its wishes.

Cape Native's Status.

16. Under these Bills the Cape Native loses his status as a citizen. No Native however educated or civilized he may be has a personal vote for his member, either on the Native Council or in the House of Assembly.

Electoral Areas.

17. There will be seven Native Electoral Areas for the Union, and the boundaries of these areas will coincide with groups of five of the Native constituencies returning representatives to the Native Council. These seven Native Electoral Areas therefore, cover half each of the Transvaal, Cape and Natal, and the whole of the Free State.

The areas of the four Provinces are:—

Cape	276,966 square miles.
Natal	35,284 square miles.
Transvaal	110,450 square miles.
Free State	49,647 square miles.

but the Act provides no machinery by which the Natives spread over these huge tracts of country can record their votes, nor does it even decide whether the seven members are to be elected by ballot or by show of hands.

For the Native voters scattered over these huge areas to assemble in one place to nominate or vote is impossible, and if it were possible they could not be identified.

18. The method of nomination is as follows:— Nomination.

3. (1) In respect of each Native Electoral Area into which the Union has been divided as aforesaid, the Governor-General-in-Council shall, by proclamation in the *Gazette*, fix a date and places for nomination of persons for election.

(2) On the date and at the places so fixed, the electors designated in terms of Sub-sections (c) and (d) of Section 3 of the Union Native Council Act 1927 by the Governor-General for the constituencies constituting any Native electoral area shall, at a meeting of such electors called for the purpose, nominate for election in that Native electoral area of that Province not more than three persons qualified hereinafter provided.

(3) If the names of more than three persons are submitted to such meeting a ballot or a show of hands shall take place and the three candidates selected at that meeting shall be regarded as duly nominated.

19. Under this clause it is clear that only one nomination meeting can be held in each electoral area, for unless the whole body of electors is present or is adequately represented at one place and time the particular three nominations desired by the majority of electors in that electoral area may not be selected. Whether the nominations at this meeting shall be reduced to three by ballot or by show of hands is left open.

20. The elections are to be held in accordance with *regulations* to be framed under the Union Native Council Bill. (*See* Section 3 (1).) Elections.

21. It would be difficult to imagine anything more haphazard or open to abuse than these election proposals, and it is a curious fact that in all the sections (except Section 7 (2) of this Representation Bill where it is repudiated) dealing with the election of these seven members the Union Electoral Act No. 11 of 1918 is ignored. Why has the Prime Minister refused to avail himself of the machinery found necessary by long experience to prevent abuses in Parliamentary elections? It is certain that the same care must be observed in elections under these Bills. Parliament itself should prepare the necessary safeguards. Electoral Act Ignored.

22. Let us pass on to the position of the seven European members of the House of Assembly after they have been elected. They will be additional to those provided under the South Africa Act, and will have the same qualifications. Their rights and powers will also be similar except that: Status of Representatives.

(a) A members so elected shall be incapable of sitting, speaking or voting in the House of Assembly or in Committee thereof whenever the matter for discussion or determination is whether there shall be an increase of the number of Native electoral areas or of members to be elected therefor, or whether any alteration shall be made in the qualifications or disqualifications of voters for such areas, or whether this section or any other provisions of this Act be repealed, altered or amended.

(b) A member so elected shall be incapable of voting in the House of Assembly or in any Committee thereof on a motion of no-confidence or on a matter in respect of which the Prime Minister or, in his absence, the Senior Minister of State present in the House, upon a division being called states that the result of the voting of all the members of the House of Assembly taking part in the decision thereon, will be regarded by Ministers as one of confidence or no-confidence in the Government. The provisions of this proviso, however, shall not apply in respect of any Bill introduced, or clause thereof, or vote or resolution proposed or moved by a Minister of State in connection with any of the matters specified in the Schedule of this Act.

Schedule.

23. The schedule alluded to in this paragraph gives a list of subjects of legislation solely affecting Natives. On some of the matters Parliament never has legislated and is never likely to legislate; other matters fall within the ordinary sphere of Provincial Council legislation. The questions of industrial and liquor discrimination on the ground of colour, have either been dealt with recently by Parliament, or will have been dealt with before this Bill can become operative, and further legislation thereon is improbable in the near future.

Native Interests Isolated.

24. The principle underlying the special disqualifications of the Native representatives appears to be that Native interests are something apart from the interests of South Africa generally; that in the government of the country, affecting as it does every member of the community, the Native is to take no serious part; that whether the financial policy of the Government is wise or unwise is not a question in the decision of which the Native is to share; that industrial measures and tariff modifications in which the Native may be more deeply concerned than other members of the State may, if the Government of the day regards them as matters of confidence, be passed into law without the Native representatives being allowed to record their votes.

Unsound Principle.

25. This principle is fundamentally unsound. The Native population of South Africa is an integral part of the community and has a right to adequate representation in all its councils.

26. Reference to the Prime Minister's Smithfield speech shows that the limitation of the Native representatives' powers was then opposed by him and he used the following arguments to justify his attitude:— Prime Minister's Change of Attitude.

> "Fear has also been expressed to me," he says, "that the seven Native members in the Assembly may create a danger to the Government by combining and throwing their weight as a group against the Government in order to make the Government fall or compel them to accede to what they desire and what the Government would not otherwise have done. This is not impossible, but for various reasons which I do not at present wish to discuss, it seems hardly probable. Suppose, however, that it does happen that they combine to form a group against the Government, then we must not forget that the Government with all its followers are dependent upon the white vote only, and that should the Government proceed to barter the interests of the country for the seven Native votes, the white population of the Union would soon enough call such a Government to account. Here also, therefore, all fears to me appear to be groundless."

27. Why has the Prime Minister altered his opinion and allowed this fatal proviso to be introduced into the Bill? He has no right to assume that the Native vote will ever be given against the best interests of the country. Fatal Proviso.

CHAPTER III.

DISCUSSION OF PRINCIPLES.

28. It now becomes necessary to discuss the general policy underlying these two measures. Why Have Bills Been Introduced?

Why have they been introduced? The reasons were given by the Prime Minister in his speech at Smithfield on November 13, 1925. This speech stands as the only exposition we have had so far of these Bills from General Hertzog:

> "It is clear to me," he said, "that the other three Provinces cannot permit that the Native franchise will be extended on the Cape basis. Neither can the Native be given the right to become a member of Parliament. It is clear further that the grant of the franchise to the Native on the Cape basis, or rather on the basis that he was to vote with the white man for a member of Parliament, would necessarily mean the ruin of the white population and of European civilization in the Union. . . . . Unless this franchise is taken away from the Cape Native, or at least fundamentally altered, the Northern Provinces, I repeat, cannot possibly continue to close their doors against the Native franchise within their boundaries too. According to expert

judgment it will not be long before the number of enfranchised Natives in the Cape exceeds the number of white voters. This contention may appear exciting to more than one of you, but there is not a single ground for contesting it, everything points to this being a correct deduction from facts and figures."

The Prime Minister continued:—

"I am not exaggerating when I say that as things are going now, within the next forty years there will be but few among the fifty and more Cape M.L.A.'s who will dare publicly to oppose the extention of the Native franchise to the rest of the Union. . . . . In most of the fifty-one (Cape) constituencies the Native vote is a very powerful one. Consequently the great bulk of Cape members, when it comes to matters touching the Native, ... will only too often be ready to adopt a line that they would otherwise not have been prepared to adopt. . . . . The deciding factor in their attitude is not what is really in the country's interests but how they can either keep or catch the Native vote."

In another passage General Hertzog says:—

"It is plain to me that the large majority of the European population of the Cape, and also a large number in the other Provinces . . . . . will oppose the abolition of the Cape franchise unless another form of Native representation in Parliament takes its place."

Criticisms.

29. Let us examine these extracts more closely. There are several points which call for our particular attention. Briefly put they are:

(1) *The Transvaal, Orange Free State and Natal will refuse to grant the general franchise to Natives.*

That feeling in the Northern Provinces is strongly against the extension of the franchise to Natives cannot be denied. What the future may bring forth we cannot say, but we can expend labour and time in creating a better spirit, and we know of nothing more calculated to attain this result than the development of Joint Councils throughout the Union.

(2) *The growth of the Native vote in the Cape has been so alarming that within forty years it will be so strong that the Cape members (50 odd Europeans) will compel the other Provinces to grant this franchise.*

Upon what facts or figures does the Prime Minister justify his statement, "it will not be long before the number of enfranchised Natives in the Cape exceeds the number of white voters"?

For the year 1922 we find that the European voters in the Cape Province numbered 156,500 and the Cape Native vote about 15,000—equivalent to, say, 10 per cent. of the Cape European electorate and less than four per cent. of the Union European electorate of 380,440.

(3) *"In most of the 51 Cape constituencies the Native vote is a very powerful one"; consequently the deciding factor in the attitude of Cape members is "not what is really in the country's interests, but how they can either keep or catch the Native vote."*

The records of the old Cape Parliament show that this statement is not justified in so far as the past is concerned. The present Cape members can be left to speak for themselves.

(4) *The extension of the franchise to Natives in the Northern Provinces would mean the ruin of the white population and European civilization in the Union.*

There is no evidence to support this dangerous statement, and its effect will be to increase ignorant fears. The fact that these fears of the Native franchise can hardly be said to exist in the constituencies where the Native vote is strongest confirms our outlook.

We again emphatically repudiate the view that Native interests are necessarily hostile to European interests, and that Natives will primarily vote *native* and not on the party lines prevailing at the time of the election. The danger to be guarded against lies in the growth of a conviction in the Native's mind that there is nothing for him in European civilization, and that it would be to his interest to destroy it. Neither a common representation nor a differentiated franchise will save South Africa if racial fears and hatreds are fostered.

(5) *No Native can be given the right to sit in Parliament.*

The refusal to permit Natives to sit in Parliament is a minor question as compared with the fundamental question as to whether they shall have adequate political representation or not.

(6) *The large majority of the European population of the Cape and also a large number in the other Provinces will oppose the abolition of the Cape franchise unless another form of Native representation in Parliament takes its place.*

So far as we have been able to observe, this is the only justification yet put forward by the Prime Minister for any political consideration whatever being offered to the Natives. The whole basis of Native representation—including the present proposals—appears to rest upon mere expediency, a very insecure foundation. If expediency is to be the only

motive for granting a modicum of Native representation expediency may also sweep it away. In addition we do not believe that the Bills under consideration will satisfy any of those persons to whom the Prime Minister refers.

Fundamental Differences.

30. We have dealt with these points because they seem to show that there are fundamental differences between the Prime Minister's attitude towards the political rights of the Native people and ours. Party-political considerations (with which this Joint Council has nothing to do) have no doubt played their part in the past and present discussions on this subject, and we quite recognise the Prime Minister's practical difficulties. Nevertheless with a feeling of profound regret and disappointment we are compelled to oppose these measures.

Born of Fear.

31. It is deplorable (if we may judge from these quotations and from other speeches) that these measures have been born of fear—fear of the "ruin of the white population of the Union, and of European civilisation in South Africa." We sympathise with the solicitude which causes this nervous apprehension, but our own anxiety arises from the dangers which will confront this country if the Prime Minister's measures are passed. Fear and injustice can no more exist apart than the two sides of the same coin.

Inherent Rights.

32. While the note of fear prevails throughout the Prime Minister's speech we miss any recognition on his part that the Native population has inherent political rights apart altogether from temporary political considerations. In criticising his speech and these measures we are therefore handicapped by the absence of any definite principles. We are compelled to examine his statements and these measures—not in the light of any principles enunciated by the Prime Minister, but under the searchlight of the political principles current in "modern European civilisation." For if "European civilisation" is to survive in South Africa* it must do so under conditions favourable to its own growth. The acid test for these measures should therefore be political justice as known to "European civilisation."

Grounds of Dissent.

33. Apart from details we find that we cannot accept these Bills on the following grounds:—

(1) We see in them no recognition of the fact that the Native people—no less than any other section of the community—form an *integral part of the Union.* The Bills regard them as creatures apart. Even as the Prime Minister's policy seems

* The adjective "European" appears to be acquiring a significance in South Africa which we cannot accept, *viz.*, that this civilisation is an attribute of the white man only and cannot be acquired by non-Europeans. The words are understood to mean "a civilisation confined to Europeans" and not "a civilisation of European type in which all sections of the community are included."

to follow no definite principles, so the franchise proposals are arbitrary and bear no relation either to the place which the Natives should occupy in the body politic, or to their actual needs. And justs as the franchise is to be arbitrarily fixed, so may it be as arbitrarily removed.

(2) The Bills contain no inducements to the Native either to advance towards civilisation or to bear his share of the government of the country. No encouragement is given him to develop as a citizen of South Africa, and no hope is held out to him of attaining citizenship. He is made to feel that whatever progress he makes in civilised ways, is unwelcome to Europeans. One of the few inducements to progress that he had as an individual (the civilised vote in the Cape), is withdrawn.

By discouraging the civilised Native, the Bills tend to "the ruin of European civilisation in South Africa," as they turn the Native back into barbarism and a dangerously primitive economic condition.

(3) We cannot accept the view that Native interests are inimical to the welfare of the country and that the interests of the European must be safeguarded by the withdrawal of the Cape Native franchise. There is nothing to support such a view in the history of the use made by the Cape Native of his vote. Wisdom demands that the Native people should be actively encouraged to believe that their interests are identical with those of South Africa generally.

(4) Whatever may be the legal bearing of Sections 35 and 152 of the Act of Union, nothing that the Native voter has done in the past justifies what will be regarded by him as a punishment and a breach of faith. Is there any precedent under democratic rule for the withdrawal of the franchise from a people who have not only not abused it but who regard the privilege as a sacred one?

The Cape Native franchise is something more than the Parliamentary representation of the Cape Native. The Natives of the other Provinces regard it as in some degree a protection for themselves also. By them the removal of the Cape Franchise would be looked upon as a catastrophe.

NOTE.

The Johannesburg Joint Council of Europeans and Natives has now published two pamphlets—the first on the Land Bill and the present one. The " Coloured Persons' Rights Bill " has not been dealt with in this way because, up to the present, the Joint Council has been formed of Europeans and Natives only.

The Joint Council believes it has done a public duty in responding to the Prime Minister's general invitation of criticisms of his Bills. Before further steps are taken, it will await the Conference of Europeans and Natives which the Federal Council of Dutch Reformed Churches is about to call for the discussion of these measures.

Meanwhile the Joint Council invites observations on the two pamphlets issued and any other contribution to the discussion.

Communications should be addressed to the Hon. Secretary, P.O. Box 854, Johannesburg.